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REVIEW OF PRIORITY THEMES

Proposals related to the programmatic aspects of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

Report of the Secretary-General

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INTRODUCTION

1. The World Ministerial Conference on Organized Transnational Crime was held at Naples, Italy, from 21 to 23 November 1994, pursuant to Economic and Social Council resolution 1993/29. On the recommendations of the World Ministerial Conference, the General Assembly in its resolution 49/159 approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, chap. I, sect. A), which it urged States to implement as a matter of urgency.

2. In the same resolution, the General Assembly requested the Secretary-General to transmit the Naples Political Declaration and Global Action Plan to the Commission on Crime Prevention and Criminal Justice for appropriate action, while recommending a higher level of priority for the United Nations crime prevention and criminal justice programme within the framework of the United Nations. In addition, the Assembly requested the Commission to keep the implementation of the Naples Political Declaration and Global Action Plan under regular review.

3. The World Ministerial Conference, in its resolution entitled "Establishment of an international task force" (A/49/748, annex, chap. I, sect. B), expressed its appreciation for the proposals of the Government of Italy to organize and host at no cost to the United Nations, in consultation with the United Nations crime prevention and criminal justice programme, an international task force for the elaboration of proposals on the feasibility of establishing an international training centre for law enforcement and criminal justice personnel. In the same resolution, the World Ministerial Conference took into account the offer of the Italian Government to act as host of the centre and to provide the organizational and functional resources; in addition, it invited the Government of Italy to submit the results of the task force's work to the Commission at its fourth session.

4. In the Naples Political Declaration and Global Action Plan specific measures were identified, to be further elaborated and implemented, in order to make action against organized crime more effective and strengthen international cooperation. The measures were intended to strengthen the ability of States to cope with the increasing threat posed by organized transnational crime in its various new forms and manifestations. They were also directed towards enhancing the capacity of developing countries and countries in transition to deal with the problems created by organized transnational crime and towards improving cooperation at the regional and international levels.

5. In the Naples Political Declaration, it was strongly recommended that continued priority attention be accorded within the framework of the United Nations crime prevention and criminal justice programme to strengthening international cooperation against organized transnational crime (para. 7). It was recognized that existing resources were not sufficient to enable the programme to support intensification of efforts at the national level and increased intergovernmental cooperation, and it was recommended that a higher priority should be accorded to the United Nations crime control activities by providing the programme with adequate resources to carry out its mandates and responsibilities (para. 45).

6. The present report contains some proposals for activities designed to assist States in initiating the implementation of the Naples Political Declaration and Global Action Plan, and to help the Commission to take appropriate action and to keep such implementation under regular review.

I. PRELIMINARY PROPOSALS FOR ACTION

7. At the World Ministerial Conference, the representatives of the 142 States proclaimed their political will and strong determination, as well as their unequivocal commitment, to ensure full and expeditious

implementation of the Naples Political Declaration and Global Action Plan. Full implementation will require considerable effort and investment on the part of States and the United Nations, as well as relevant intergovernmental and non-governmental organizations. In order not only to maximize the effect of appropriate action by the Commission, but also to assist States in directing their efforts and resources towards implementation more efficiently, it might be useful to chart a course by identifying areas on which attention should be concentrated and where the United Nations can make a contribution by planning and implementing operational activities. The heads of State and Government, ministers and other high-level representatives of Governments participating in the World Ministerial Conference expressed their deep concern about the dramatic growth of organized crime over the previous decade and about its global reach, which constituted a threat to the internal security and stability of sovereign States. The threat is bound to grow and become more menacing if concerted and decisive action on the part of the international community is delayed. While energies have to be focused and action planned in the most efficient manner, the ultimate goals of effectively preventing and controlling organized transnational crime in all its forms and dimensions and of arresting its expansion at the national and international levels should be guiding the relevant efforts and should constitute the yardstick against which success is to be measured.

A. Improving reliable knowledge

8. Within the framework for strengthening international cooperation already provided by the Naples Political Declaration and Global Action Plan, certain areas of primary concern for the international community have emerged. The capacity of States to prevent and control organized transnational crime depends largely on knowledge and the availability of reliable information about its characteristics, the structures of organized criminal groups, their methods of operation and their interests with respect to illicit activities. In many developed countries, the growth of organized crime has led to considerable high-quality work with respect to accumulating knowledge and collecting reliable information. In spite of these advances, the task facing law enforcement agencies and the criminal justice system in general remains an arduous one, because of the increased diversification and expansion of organized crime across borders, as well as its tendency to become involved in activities characterized by high complexity. In most developing countries and countries in transition, however, various factors, ranging from lack of adequate resources to recent rapid political and economic developments and changes, have slowed down or otherwise inhibited the process of attaining a thorough understanding of the situation. Furthermore, there are considerable difficulties in evaluating the threat posed by organized transnational crime and the capacity of law enforcement and criminal justice systems to respond to it. Compounding these difficulties are changes in the characteristics of organized transnational crime and an almost dramatic increase in the sophistication of its operations, as well as its mounting expansion in response to increased opportunities and weaknesses of national institutions.

9. The Naples Political Declaration and Global Action Plan emphasized the importance of adopting a generally agreed concept of organized crime as a basis for more compatible national responses and more effective international cooperation. In the absence of the comprehensive knowledge about organized crime referred to above, arriving at such a common concept may entail increased difficulties. Consequently, the full potential of international cooperation may be rather difficult to realize, leaving room for loopholes that continue to be exploited by organized criminals. The lack of a common concept of organized crime can considerably hinder national law enforcement and judicial authorities in their efforts to detect, prosecute and adjudicate cases involving organized crime. The exchange and sharing of information and intelligence are vital to these efforts. In many cases, even where bilateral or multilateral cooperation arrangements exist, there appears to be no channels of communication and information exchange between Governments and between the competent national authorities. The reason often cited for this is the lack of understanding of a country's legal system and of the capacity of law enforcement and judicial authorities to produce the best possible results with the relevant information.

Such concerns, which may also include apprehensions regarding the security of information or intelligence, have been known to hamper major investigations and to cause long delays in judicial proceedings, sometimes resulting in impunity for individuals who had been apprehended at a high financial and human cost.

10. The need to improve knowledge on organized crime and its transnational dimensions and activities has become more urgent mainly because of the increased realization of its effects on national and international financial systems, as well as on institutions and society as a whole. There are two levels of knowledge required, which need to coexist and be developed concurrently.

11. The accumulation of theoretical knowledge is irreplaceable in educating younger generations and the public in general and in devising strategies and developing measures to counter the corrupting effects of organized crime on societal values. Theoretical knowledge, however, cannot replace the practical, operational knowledge imparted to law enforcement and judicial personnel to enable them to prevent and control organized transnational crime at all levels. Each type of knowledge will stand to benefit greatly from the other, and a balanced development of both will go a long way towards achieving effective action against organized transnational crime. Academic institutions and professional associations have a major role to play in accumulating theoretical knowledge on organized transnational crime and in disseminating such knowledge, in close cooperation not only with governmental agencies and the education system, but also with the media, non-governmental organizations and the private sector.

12. The development of operational knowledge requires the capacity to process and evaluate information and intelligence derived from day-to-day operations and investigations and from the experiences of other countries in the field. While research is a major component of theoretical knowledge, experience and expertise acquired in field work form the basis of practical knowledge. Another essential element of practical knowledge is the ability of law enforcement and judicial personnel to evaluate the information collected and processed and the intelligence accumulated. This is particularly important in connection with the detection, investigation and adjudication of economic crimes and other illicit activities of organized criminal groups involving financial operations and business transactions.

13. The capacity to collect, process and evaluate information and intelligence at the national level, and also across borders, requires careful planning and consistent implementation of relevant strategies and policies, as well as emphasis on human resource development. In addition, the use of and reliance on modern telecommunications and data-processing equipment are of considerable importance, in view of their increasing utilization by organized transnational crime. Therefore, the accumulation of practical knowledge requires, in addition to commitment and determination, major and long-term investments by Governments, often not only at the operational level but also at the institutional level.

14. For the purpose of the acquisition and dissemination of theoretical knowledge, academic institutions, professional associations and the media should be actively encouraged and supported, and programmes should be put in place to enlist the involvement and participation of the private sector and non-governmental organizations. Comparative studies of practices and experiences in different countries could contribute to the accumulation of both types of knowledge, while the capacity to exchange and use information and intelligence could strengthen international cooperation and render action against organized transnational crime more effective.

15. In an effort to begin collecting information to facilitate the process of accumulating knowledge, the Crime Prevention and Criminal Justice Branch of the Secretariat included the issue of transnational crime for the first time in the Fourth Survey on Crime Trends and Operations of Criminal Justice

Systems. An interim report by the Secretariat on the results of the Fourth Survey supplement on transnational crime (A/CONF.169/15/Add.1) was presented to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995, and will be available to the Commission.

16. One of the conclusions that can be drawn from the replies provided by Governments is that there are considerable difficulties in many parts of the world in identifying activities of a predominantly transnational nature that organized criminal groups have engaged in. While the potential effects of these activities are appreciated and there are indications that measures are being devised to begin to come to terms with the problems created, in many cases there appears to be a lack of analysis focusing on the specific characteristics of organized crime and the transnational dimensions of its activities. Consequently, there is a delay in legislative and regulatory action which, drawing on the results of such analysis, would prevent and control the further expansion and diversification of organized transnational crime and would promote more effective international cooperation.

17. Developed countries are generally in a position to devote the necessary resources for acquiring the theoretical and practical knowledge that is required for the effective prevention and control of organized transnational crime. As mentioned in paragraph 8 above, considerable efforts in that direction are being made.

18. The difficulties encountered by developing countries and countries in transition, however, make assistance crucial. The United Nations should be in a position to assist countries, through the provision of advisory services and training, in developing the means and techniques of gathering, processing and evaluating information and intelligence on the operations of organized transnational crime, on its methods and interests and on the ways of laundering and using the proceeds of its activities. In collecting and processing information, emphasis should be placed on the expansion of organized crime across borders and on its increased levels of diversification and sophistication, which are elements that require particular attention since they differentiate this form of crime from others. The accumulation of practical knowledge would largely depend not only on the studies that could be carried out at the national level, but also on the comparative studies that could be carried out at the regional and international levels on the basis of reliable information. The Commission may wish to consider the most appropriate modalities of making such assistance by the United Nations possible.

19. In the Naples Political Declaration and Global Action Plan, it was recommended that the United Nations should assist States in specific actions, including increasing the international community's knowledge of criminal organizations and their dynamics (paras. 13 and 43). Accordingly, the Commission may wish to consider the initiation by the United Nations of a comprehensive comparative study of the situation in the various regions of the world, possibly by assembling a team of highly qualified experts with extensive experience in the field of prevention and control of organized crime.

20. By making a global assessment of the transnational organized crime situation, the study would contribute to a better understanding of problems arising from differences among countries in the perception and evaluation of organized transnational crime, thus leading to the gradual development of a common perception of the phenomenon and of a global strategy for more effective international cooperation. The study should draw on national experiences, assisting in the process individual countries that lack the relevant capacity to identify the problem and begin collecting and processing reliable information. It should include an examination of specific types of criminality that are considered particularly dangerous or alarming and an examination of the problems arising from the expansion or reallocation of transnational criminal organizations to countries where defence mechanisms are weak. It should also consider conditions that are conducive to the rise and growth of criminal organizations, such as social, economic and political factors, structural characteristics of organized crime,

and organizational shortcomings in the control agencies. And it should include an analysis of the problems related to the different degrees of development of laws and regulations in individual countries, as well as an analysis of the activities and methods of operation of transnational criminal organizations. The results of the study could be used for the development of special programmes, courses and curricula for academic institutions, to ensure that theoretical knowledge is increased, improved and disseminated, thereby creating the basis for long-term and consistent action against organized transnational crime.

B. Assistance in the legislative and regulatory fields

21. The Naples Political Declaration and Global Action Plan recognized the great importance of adequate legislative and regulatory measures in the prevention and control of organized transnational crime. In particular, it was recommended that the experience of those States which have confronted organized crime and the intelligence derived from the analysis of its structures and criminal activities should be examined by other States for useful guiding principles concerning what substantive, procedural and regulatory legislation and organizational structures were necessary to combat the phenomenon (para. 14). In addition, the regulatory measures recommended in the Naples Political Declaration and Global Action Plan with respect to money-laundering and the proceeds of crime, and other law mechanisms to reinforce transparency and integrity in business and government, should be considered preventive measures of equal importance with penal law means of combating organized crime (para. 18). It was also recommended that substantive legislation penalizing participation in criminal organizations or conspiracies and imposing criminal liability on corporate bodies should be considered by States as a means of strengthening capabilities to combat organized crime domestically and improving cooperation internationally (para. 15).

22. As mentioned in paragraph 16 above, legislative and regulatory measures for the prevention and control of organized transnational crime are still lacking in a number of countries, in spite of the willingness to effectively address this form of crime. In the absence of specialized theoretical and practical knowledge, and in view of the difficulties faced in obtaining such knowledge, as well as the results of the experience accumulated in other countries, the elaboration of strategies and their implementation through legislative and regulatory measures are daunting tasks for many countries, particularly developing countries and countries in transition.

23. In the Naples Political Declaration and Global Action Plan, there was an expressed wish to strengthen and enhance the capability of States, as well as the United Nations and other relevant global and regional organizations, to achieve more effective international cooperation against organized transnational crime, particularly in relation to, *inter alia*, closer alignment of legislative texts concerning organized crime (para. 9). In fact, divergences in legislative and regulatory measures are often considered to be among the principal difficulties encountered in bilateral and multilateral cooperation.

24. The first step towards convergence, and eventual closer alignment of legislative and regulatory measures, should be the adoption and promulgation of policies of demonstrated effectiveness that do not generate problems of compatibility where the legal systems differ, but that actually facilitate cooperation between countries. In the area of substantive legislation, efforts against organized transnational crime could be considerably strengthened by introducing: (a) reforms focused on making it a criminal offence to participate in a criminal organization, making it a criminal offence to take part in conspiracy or to commit similar forms of inchoate offences, prohibiting the laundering of criminal proceeds; and (b) sanctions and other measures, such as the confiscation of illicit proceeds, aimed at defeating the economic power of criminal organizations.

25. In any effort towards closer alignment of the legislative approach to organized transnational crime, the regulatory measures necessary to obtain maximum transparency of financial systems and to prevent monopolies should not be neglected.

26. The Commission may wish to consider the establishment by the United Nations of a central repository of existing legislative and regulatory measures and information on organizational structures designed to combat organized crime. Such a repository would need to be continuously updated and complemented with comparative analyses and commentaries, as well as with information on the ways that measures are applied and on their contribution to the prevention and control of organized transnational crime. The material and information contained in the repository would be placed at the disposal of States and could be used in advisory services and training undertaken by the United Nations in response to requests for assistance in the field of prevention and control of organized transnational crime. The results of the comprehensive study on the organized transnational crime situation in the various regions of the world, mentioned in paragraph 19 above, would be combined with these comparative analyses to enhance the options available to States wishing to enact legislative and regulatory measures.

27. On the basis of the information on legislative and regulatory measures and building on the knowledge and experiences accumulated through the comprehensive study, the United Nations could develop practical models of and practical guidelines for substantive and procedural legislation, in cooperation with relevant international organizations and individual States wishing to contribute to the process. Furthermore, the United Nations could assist requesting States in tailoring these models and guidelines to their particular exigencies and their legal, cultural and social traditions, in order to facilitate integration of the relevant policies and measures within their specific systems, as well as their implementation. In specific areas that present particular difficulties, such as the laundering and use of the proceeds of crime, special attention could be given to assisting States not only in obtaining information on measures and developing the appropriate mechanisms, but also in assessing the needs of their systems in order to maximize the effectiveness of measures and in identifying the most appropriate mechanisms for their implementation.

C. Advisory services and training

28. The accumulation of knowledge and expertise and the development of the capacity to collect, process and analyse reliable information require efforts spanning a considerable period of time. It is necessary to put together the appropriate expertise and to carry out a study that is truly comprehensive, constituting a major contribution to the common efforts of the international community against organized transnational crime. Capacity-building requires a consistent, long-term commitment to ensure that the benefits of assistance can be sustainable through the consolidation of mechanisms and procedures, and the creation of the necessary infrastructure; organized transnational crime, however, continues to be a growing threat to the international community. A well-balanced approach is therefore essential. The efforts to accumulate knowledge need to be undertaken simultaneously with efforts to meet the present needs of States for immediate measures to prevent the expansion of organized transnational crime and to mitigate its effects on their economies and institutions. Concurrently with the need to build the capacity for information collection, there is an urgent need to strengthen existing mechanisms and institutions to fight against organized transnational crime.

29. In order to contribute to this balanced approach, the United Nations should assist requesting States in assessing their immediate needs, through the provision of advisory services. Such services should also be provided in reviewing existing measures, mechanisms and institutions in order to identify and put in place modalities for strengthening their capacity to respond to the problems created by the new manifestations of organized transnational crime. In response to requests from States, the United Nations

should provide expert advice and options on the establishment of special investigative units and on developing reliable evidence-gathering techniques. For the purpose of strengthening the capacity of States to cooperate and exchange information, intelligence and experience, the United Nations should assist in the creation of special mechanisms and the implementation of the appropriate measures.

30. A fundamental purpose of international cooperation is to contribute to the creation of self-reliant capacities in developing countries, as well as in countries in transition. Strengthened technical cooperation in the fight against organized transnational crime should be viewed as a significant step in that direction. The operational activities of the United Nations crime prevention and criminal justice programme should be geared towards developing expertise, especially in countries where it is scarce, and towards promoting the highest standards of professionalism and specialization. Training and upgrading the skills of personnel working in the various areas of criminal justice are crucial, particularly with respect to the investigation, prosecution and adjudication of complex cases. For the purpose of maximizing resources and raising awareness, training seminars could be first organized at the regional level, concentrating on common exigencies and problems, with a view to responding to requests for training courses at the national level. In order to achieve these aims, appropriate expertise needs to be identified and training material developed that would cater to the specific requirements of each region or each group of trainees. Furthermore, effective channels of communication are necessary in order to assess needs and prevailing circumstances, so that training activities can be tailored accordingly. The Commission may wish to identify the most appropriate ways of enabling the United Nations to respond to the requests of States in this area and to provide the assistance outlined above.

II. CONCLUSIONS

31. The activities outlined in the present report constitute first steps towards the implementation of the Naples Political Declaration and Global Action Plan. The activities, which are designed to assist States in translating into reality the commitment that they proclaimed at Naples, invariably depend on the cooperation of all States and their support of the operational capacity of the United Nations. A considerable number of other activities are required for the full implementation of the Naples Political Declaration and Global Action Plan, both at the national and international levels. The Commission on Crime Prevention and Criminal Justice has a crucial role to play not only in identifying the most appropriate course of action for such implementation and the required modalities, but also in keeping implementation under constant review and in encouraging States to take action in that direction.

32. With respect to the implementation of the World Ministerial Conference resolution on the establishment of an international task force, the Government of Italy convened a meeting of the task force at Rome on 17 and 18 May 1995. It is expected that the results of the meeting will be brought to the attention of the Commission by the Government of Italy.